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IMPLEMENTATION OF THE INTERNATIONAL CONVENTION ON THE SUPPRESSION AND PUNISHMENT OF THE CRIME OF APARTHEID

Reports submitted by States parties under article VII of the Convention

Addendum

TUNISIA*

[2 April 1991]

1. The term "the crime of apartheid", which includes similar policies and practices of racial segregation and discrimination, is defined in article II of the International Convention on the Suppression and Punishment of the Crime of Apartheid.

As regards the legislative, judicial, administrative and other measures adopted by Tunisia in order to give effect to the provisions of the Convention, it is pointed out that respect for the dignity of the human person, which had been demanded by the Tunisian national movement, has become a reality guaranteed and provided for in the Constitution.

2. Even before the adoption of the Constitution in 1959, Tunisia, having gained its independence, promptly joined the United Nations and subscribed to the Universal Declaration of Human Rights (12 November 1956).

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* The initial and second periodic reports submitted by the Government of Tunisia (E/CN.4/1353/Add.9 and E/CN.4/1983/24/Add.14) were considered by the Group of Three at its 1981 and 1984 sessions respectively.

3. The Tunisian Constitution has proclaimed, in its preamble, the determination of the Tunisian people "to remain faithful to the human values that constitute the common heritage of peoples attached to human dignity, justice and freedom". Furthermore, in its articles 5 et seq., the Tunisian Constitution enunciates the fundamental human rights and freedoms.

4. The fundamental human rights that are recognized and guaranteed by the Constitution are recognized and guaranteed for all without any discrimination and without regard to race, colour, sex, language, religion, political or other opinion, national or social origin, property or birth.

5. This is true in respect of article 5, which guarantees the inviolability of the human person and freedom of conscience, as well as the free exercise of beliefs; of article 8 on the freedoms of opinion, expression, the press, publication, assembly and association; of article 9 on the inviolability of the domicile and the secrecy of correspondence; of article 10 on the right of every citizen to move freely in the interior of the territory, to leave it and to establish his domicile; of article 11 which prohibits the expatriation of any citizen or the prevention of his return to his country; of article 12 on the presumption of innocence of every accused person; and of article 13 which provides that sentences are personal and cannot be pronounced except by virtue of a law existing prior to the punishable act.

6. Furthermore, no distinction is made between citizens. As is stated in article 6 of the Constitution: "all citizens have the same rights and the same duties. They are equal before the law."

7. Tunisia has also acceded to several human rights conventions, including those relating to non-discrimination. These conventions, which have been embodied in Tunisia's internal law and take precedence over any Tunisian legislation (art. 32 of the Constitution), confirm and express in more detail the prohibition of the various forms of discrimination. The following are some of the conventions which Tunisia has ratified:

The International Convention on the Elimination of All Forms of Racial Discrimination (ratified in 1966);

The Convention Against Discrimination in Education, adopted by the General Conference of UNESCO (ratified in 1969);

The Convention on the Elimination of All Forms of Discrimination against Women (ratified in 1985);

The Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity (ratified in 1966);

The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights (accession in 1969) ...

8. Tunisia has never failed in its duty not to engage in any practice of racial discrimination against persons or institutions. On the contrary, as a Muslim country, it has established juridical machinery which testify to the

country's spirit of tolerance and equality under the law. Tunisia guarantees freedom of conscience and protects the free practice of beliefs.

9. More than 5,000 Tunisian citizens are of the Jewish faith. By an Act of 11 July 1958 the legislature has provided for the practice of their religion. The Act provides for Jewish cultural associations (one for each governorate). These bodies have legal personality. Their purpose is the administration of religious observance "... cultural assistance to needy persons of the Jewish faith, the organization of religious teaching and the management of establishments for such teaching" (art. 2 of the Act of 1958). Each association is administered by a board elected by the General Assembly. There are two requirements for election to such a board: to be of Tunisian nationality and to be 30 years of age or over. The Chief Rabbi is appointed by decree following the customary consultations. He is received by the Head of State with the same honours as the high dignitaries of Tunisia.

10. The status of the Catholic Church is laid down in a bilateral agreement between the Tunisian State and the Holy See that was concluded on 27 June 1964. Under this agreement the Tunisian Government protects the free practice of the Catholic faith (art. 1); the Church, for its part, undertakes to refrain from all political activity in Tunisia (art. 3). The Church possesses legal personality and is represented by the Prelate of Tunis, who is appointed by the Vatican. The agreement contains a number of provisions authorizing the full practice of the Catholic religion (arts. 4 and 5).

11. It must also be pointed out that the Constitution declares Islam to be the religion of the State. More specific and detailed legislation supplements the constitutional provision and confirms the neutrality of the Tunisian State, vis-à-vis the different religions:

(a) The Tunisian Nationality Code (of 28 February 1963), which establishes the ties of allegiance between Tunisian nationals and their country, excludes any definition of nationality based on religion and thus denies entitlement to a nationality based solely on the fact of being of a particular religious faith (jus religioni). In other words, Tunisian nationality is granted or acquired only on the bases of filiation (jus sanguini) (art. 6 of the Nationality Code), birth in Tunisia (jus soli) (arts. 7 to 10 of the Code), the benefit of the law (arts. 12 to 18) or naturalization (arts. 19 to 25). Consequently, not only is the Tunisian law positive, since, in the matter of nationality, it makes no distinction of a racial or ethnic character, but moreover, since the 1975 reform, the voluntary acquisition by a Tunisian of a foreign nationality is no longer an automatic ground for loss of Tunisian nationality (Act No. 75-79 of 1 November 1975);

(b) The Military Service Act. Article 15 of the Constitution considers "The defence of the country and its territorial integrity" to be "a sacred duty of every citizen". It follows necessarily from this that Tunisian citizens, in principle regardless of their religion, are liable to military service, due account being taken of the Nationality Code and the Military Service Act. Thus, military service is required of "all Tunisian citizens who are 20 years of age, unless they are medically certified to be unfit for service" (Act No. 87-19 of 31 May 1967 relating to military service).

12. Tunisian legislation therefore prohibits racial discrimination and guards the country from the temptation to justify, by legal artifice, the practice of racial discrimination by private groups or public institutions. Furthermore, Tunisian law contains a set of provisions designed to punish those who hamper or disturb the practice of a religion and to punish racial or religious hatred.

13. The Criminal Code establishes, in its article 165 a penalty of imprisonment for six months and a fine for anyone who hampers or disturbs the conduct of religious worship or ceremonies, without prejudice to more severe penalties applicable in the case of insult, assault or threats. Article 166 establishes a penalty of three months' imprisonment for anyone who, without lawful authority over a person, compels that person, by violence or threats, to practise or refrain from practising a particular form of religious worship.

14. The Criminal Code also establishes, in article 161, a penalty of one year's imprisonment and a fine for anyone who destroys, degrades, mutilates or soils buildings, monuments, emblems or objects used for worship.

15. The Press Code (art. 44) establishes a penalty of two months' to three years' imprisonment and a fine for anyone who, through the press or by any other intentional means of dissemination, incites to racial hatred or the causing of offence to any religion whose practice is authorized. For defamation or insult committed with the object of inciting to hatred of a group of persons who, because of their origin, are of a particular race or religion the Code establishes penalties that are more severe than those applicable where these offences are committed against individuals (art. 53, para. 3, and art. 54, para. 4).

16. The foregoing shows clearly that Tunisia is juridically equipped to prevent any practice involving racial segregation or discrimination.

17. The existing legal arsenal has been strengthened by the promulgation of the basic law on the organization of political parties (Organic Law No. 88-32 of 3 May 1988). This law requires parties "to ban violence in any form, as well as fanaticism, racism and all other forms of discrimination" (art. 2). Furthermore, a political party "may not base its principles, activities and programme fundamentally upon a religion, a language, a race, a sex or a region" (art. 3).

18. Attention is drawn to the fact that humanitarian and human rights organizations occupy a prominent place in Tunisia and carry out their activities in close and continuing cooperation with the governmental authorities.

19. The Tunisian League for Human Rights and the Tunisian Association for Human Rights and Public Freedoms play an important role in the area of defence and safeguarding of human rights. The statutes of the Tunisian League for Human Rights state that the League:

Is a voluntary organization for the defence of human rights;

Defends democratic freedoms and social justice and seeks the means of establishing a just and lasting peace among nations;

Continually opposes arbitrary action, violence, intolerance and all forms of discrimination from wherever they may come.

20. Clear instructions have been given by the Government, through the Minister for Home Affairs, to all officials of the Ministry in general and to officers and other personnel of the Internal Security Forces in particular, with the object of ensuring that citizens are treated on the basis of the law and on an equal basis, without distinction, and of facilitating the stay of foreign residents in Tunisia.

21. It is perhaps appropriate to point out that Tunisia, having been a crossroads of civilization where several races have mingled, where the Muslim faith forbids any discrimination, and where the problem of racial discrimination has never been known, welcomes the continuing efforts being made by the international community, and by the United Nations in particular, to put an end to apartheid, which constitutes not only a violation of the principles of the Charter of the United Nations and of human rights, but also a threat to peace and security throughout the world. For this reason Tunisia has repeatedly reaffirmed its total solidarity with the black people of South Africa in their heroic struggle for freedom and for the elimination of apartheid, one of the most distressing problems humanity has known.

22. In the general area of human rights, Tunisia can pride itself on having made substantial progress since 7 November. A substantial juridical arsenal has been developed for strengthening individual and public freedoms, thus establishing the rule of law and committing the country to a henceforth irreversible democratic process. The declaration of 7 November marks important steps in the implementation of the legislative guarantees that have been adopted.

23. Several bold and comprehensive initiatives have been taken: enactment of the new law on police custody and preventive detention, that is designed to protect the individual against any kind of abuse; the establishment of a constitutional council to see that Tunisia's laws are consistent with the spirit and the letter of the Constitution; a new law on parties that establishes effective political pluralism; the authorization of a Tunisian section of Amnesty International (Tunisia has thus become the first Arab country to give legal authorization for a local section of Amnesty International); abolition of the penalty of hard labour; ratification, without reservation, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and of course, the release of all political prisoners.

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